IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE NINTH DAY OF AUGUST
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MS JUSTICE G.ROHINI

WRIT PETITION NO : 12613 of 2004

Between:

S.Rama Reddy S/o S.Buchi Reddy
Plot No.29/1, Kattedam Industrial Estate, Hyderabad -500 077

..... PETITIONER

AND

1 The Deputy Registrar, Co-Operative Socieites
Andhra Pradesh , Hyderabad
2 The Sales Officer-14 Vasavi Cooperative Urban Bank Limited
Malakpet, Hyderabad -500 035

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a direction or order or writ, more particularly one in the nature of writ of Mandamus declaring the action of the respondents in threatening the petitioner to forfeit 15% of the bid amount, as illegal, and consequently direct the respondents to receive the balance amount within a period of 8 weeks , in the interest of justice;

Counsel for the Petitioner: MR.M.GOVIND REDDY

Counsel for the Respondent No.1: GP FOR COOPERATION

Counsel for the Respondent No.2 : Mr.S.Ashok Anand Kumar

The Court made the following :

THE HONOURABLE MS.JUSTICE G.ROHINI

WRIT PETITION NO.12613 OF 2004

ORDER:

This writ petition is filed seeking a declaration that the action of the respondents in seeking to forfeit 15% of the bid amount deposited by the petitioner as arbitrary and illegal and for consequential direction to the respondents to receive the balance amount within a period of eight weeks.

The 2nd respondent issued the auction notice dated 04-06-2004 for sale of a portion of a land situated at Kattedan Industrial Development Area, by way of public auction, in execution of a decree obtained against M/s. Ergotech Furniture Systems for recovery of the amounts due. The auction Notice was published in Eenadu daily dt. 5.6.2004 and the auction was originally scheduled on 11.6.2004. However on 11.6.2004 the auction did not take place and it was conducted on 17.6.2004. The petitioner having deposited a sum of Rs.50,000/- towards Earnest Money Deposit, participated in the auction and offered his bid of Rs.30,25,000/- and he was declared as the highest bidder.

The petitioner states that having been declared as the highest bidder, he

deposited 15% of the bid amount on 17.6.2004 and 18.6.2004 respectively in the account of the sale officer of 2nd respondent Bank as per auction notice. However, soon after depositing 15% of the bid amount the respondents informed the petitioner that he is required to remit the balance of Rs.25,65,000/- also within 15 days from the date of auction. Petitioner states that such a clause has not been specified in the auction notice published on 5.6.2004 and therefore, he was not aware of the same. Though he tried to mobilize the required funds since he bedridden for three weeks, he could not do the same. Hence, this writ petition seeking a direction to extend the time by eight weeks for depositing the balance amount.

I have heard the learned counsel for the petitioner and the learned Standing Counsel Sri Ashok Anand Kumar appearing for the second respondent-Bank.

The learned standing counsel under instructions states that all the participants in the auction were put on notice that the remaining bid amount has to be remitted within 15 days from the date of auction and that the pamphlets issued by the sale officer to that effect have been duly published at the place of auction even before the auction was conducted. A copy of the said pamphlet has been placed before this Court which contains a specific clause as under:

> " The highest bidder in whose name the auction takes place has to deposit 15% of the bid amount immediately in the account of Sale Officer, Vasavi Co-operative Urban Bank Ltd., Malakpet, Hyderabad and the remaining bid amount has to be remitted within 15 days from the date of auction; otherwise the entire amount of E.M.D. and 15% of the bid amount will be forfeited".

The learned counsel for the petitioner vehemently contended that the said clause which is specified in the pamphlets distributed at the time of the auction does not form part of auction notice published in the newspaper and therefore, it is not open to the respondents to insist upon the compliance of such condition which is in the nature of penalty. I am unable to accept the contentions of the learned counsel for the petitioner. It is to be noted that Rule 52 of the A.P. Co-operative Societies Rules, 1964 prescribes a detailed procedure with regard to execution of decrees or orders, particularly with regard to attachment and sale of movable and immovable properties of the defaulter. When any immovable property of the defaulter is sold, as per Rule 52(11)(g), the sum of money equal to 15% of the price of the immoveable property shall be deposited with the sale officer by the purchaser at the time of the purchase

and in default of such deposit the properties shall forthwith be resold. So far as payment of remainder, Rule 52(11)(h) states that the remainder of the purchase money and the amount required towards stamp fees for the certificate under Clause (v) of sub-rule (14) shall be paid within fifteen days from the date of sale. Rule 52(11) (i) further adds that in default of payment within the said period, the deposit may, if the Registrar thinks fit after defraying the expenses of the sale, be forfeited to the Government and the property shall be resold and the defaulting purchaser shall forfeit all claims to the property or to any part of the sum. In the light of the said mandatory statutory provisions, it is not open to the petitioner to contend that he is not bound to pay the balance within 15 days, merely on the ground that such condition was not incorporated in the Auction notice dated 4-6-2004 published in the local dailies. At any rate, since the said condition was also brought to the notice of all the bidders on 17-06-2004 even before the auction was conducted, which fact has not been denied by the petitioner, the petitioner having participated in the auction is not entitled to seek any relief which would run contrary to the auction conditions as well as the statutory provisions. Moreover, the affidavit of the petitioner does not disclose whether he made any request before the 2nd respondent seeking extension of time. The fifteen days time available for remitting the remainder of purchase money expired on 2-7-2004 itself. This writ petition filed long thereafter on 19-7-2004 does not appear to be bona fide. The decisions **WORKERS TRUST AND MERCHANT BANK LIMITED v. DOJAP INVESTMENTS LIMITED** and **COMMISSIONER OF PUBLIC WORKS** (And as such representing the Colonial Government) **V. HILLS** relied on by the learned Counsel for the petitioner do not attract to the facts in the case on hand. Without challenging the validity of the auction conditions which are in consonance with the statutory rules, the petitioner cannot plead that the action of the respondents in insisting for payment of balance of purchase money is arbitrary or illegal.

For the aforesaid reasons, I do not find any irregularity in the procedure adopted by the respondents and the writ petition is devoid of merit.

The writ petition is accordingly dismissed. No costs.

09.8.2004.

mdaa.

Copy to:

1 The Deputy Registrar, Co-Operative Socieites
Andhra Pradesh , Hyderabad

2. Two C.Cs. for G.P.for Cooperation, High Court of A.P., High Court Building, Hyderabad (OUT).

3. Two C.D.copies.